UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/558,031	04/25/2000	Thomas Alan Sponheim	MS147303.1	9355

27195	7590	09/19/2005

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EXAMINER
ALI, SYED J

ART UNIT	PAPER NUMBER
2195	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>24 August 2005</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>*24 August 2005*</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: *None*.

    Claim(s) objected to: *None*.

    Claim(s) rejected: *1-46*.

    Claim(s) withdrawn from consideration: *None*.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because: Applicant continues to reiterate the argument that Berstis (USPN 6,785,869) is deficient, as allegedly failing to teach or suggest "creating a communication channel in response to selecting an element." In response to this argument, Examiner indicated how Berstis necessarily must create a communication channel is some embodiments to retrieve definitional information, e.g. if the client is configured as a network computer and must retrieve all information from a server (col. 4 lines 52-59). This example was provided as showing generally how Berstis is capable of supporting the claimed feature of "creating a communication channel in response to selecting an element," even though the limitation is not explicitly recited. However, Applicant has seized upon one possible implementation of a networked computer and relies upon that implementation in an attempt to traverse Berstis. That is, Applicant indicates that the client computer having no local storage requires a communication channel to be pre-existent, rather than created in response to selection of an element. However, this is an extremely narrow interpretation of Berstis and networked computers in general. The implementation described by Berstis is just one of a myriad of supported network computer configurations (col. 4 lines 44-46, "Those of ordinary skill in the art will appreciate that the hardware in Fig. 3 may vary depending on the implementaion.") If the network computer had local storage, it could simply download the initial programs and recreate the communications channel when an update is required. That Berstis does not iterate a laundry list of possible implementations does not indicate that one of ordinary skill in the art would not realize that other implementations are possible. With respect to network communications, there are various well known features of the prior art that would suggest creating a communications channel. For instance, in an office environment where many client computers need to interact with the server, it would be a tremendous waste of bandwidth to have a persistent connection to the server. To create the channel as needed would greatly alleviate this burden. In fact, this is a very well known feature of the prior art, e.g. sessions time out after a period of inactivity. Applicant's argument that Berstis fails to teach or suggest "creating a communications channel in response to selecting an element" is based on nothing more than the fact that Berstis does not explicitly delimit the disclosure to such an embodiment. However, the patent does not exist in a vacuum. Prior art features of networked and distributed computing are well within the contemplation of Berstis; by no means is dynamic creation of a communications channel a patentable improvement over the prior art. It is a commonplace feature of networking.